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Supreme Court of the United States

JANUARY TERM, 1928

No. 14 Original

THE STATE OF CONNECTICUT, COMPLAINANT

v.

THE COMMONWEALTH OF MASSACHUSETTS, DEFENDANT

IN EQUITY

MOTION FOR LEAVE TO FILE BILL IN EQUITY
BILL OF COMPLAINT

BENJAMIN W. ALLING,
Attorney General of the State of Connecticut and Solicitor and Counsel for the Plaintiff.

ERNEST L. AVERILL,
Deputy Attorney General of the State of Connecticut

BENEDICT M. HOLDEN,
of Counsel.

THE CASE, LOCKWOOD & BRAINARD CO.
HARTFORD, CONN.

Supreme Court of the United States

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MOTION FOR LEAVE TO FILE BILL IN EQUITY

The State of Connecticut, by its attorney-general, appearing in that behalf by and with the authority, consent and direction of the governor of said state, comes now here and presents this its motion for leave to file in this court a bill in equity against the Commonwealth of Massachusetts, and to have process issued thereon. A true copy of said bill is herewith exhibited to the court, and forty copies thereof are now on file with the clerk of this court. And as grounds of this motion, the said State of Connecticut, complainant, shows to this honorable court:

1. That the State of Connecticut and the Commonwealth of Massachusetts are each one of the original states of the United States of America.

2. That the controversy between the State of Connecticut and the Commonwealth of Massachusetts is of a civil nature and properly justiciable before this honorable court as will more fully appear in the allegations of this bill in equity hereto attached.

THE STATE OF CONNECTICUT,
By BENJAMIN W. ALLING,
Its Attorney-General.

ERNEST L. AVERILL,
Deputy Attorney-General.

BENEDICT M. HOLDEN,
of Counsel.

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BILL OF COMPLAINT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your orator, the State of Connecticut, and one of the States of the United States of America, by Benjamin W. Alling, its Attorney General, presents this bill of complaint against the Commonwealth of Massachusetts, also one of the States of the United States of America, by virtue of the direction and authority contained in a joint resolution of the General Assembly of the State of Connecticut, approved on the 8th day of June, 1927, a copy of which joint resolution is hereto attached, marked Exhibit "A," and as fully made a part hereof as if copied herein, and also by the special direction and authority of the Governor of the State of Connecticut

as provided in said act; and thereupon your orator complains and says:

The State of Connecticut was one of the "Thirteen Original Colonies," which, by covenant, constitution, contract and agreement, created the United States and imposed and conferred upon it its governmental powers and duties, which said State, as one of the thirteen original States, was then a body politic organized and maintained for the purpose of promoting the happiness, prosperity and well-being of the people residing within its territorial limits, and had succeeded to all the various rights, properties, duties and obligations conveyed or created by charter granted in 1662, by King Charles II, King of Great Britain, a sovereign of the nation then owning the lands, waters, and other properties which are now comprised within the territorial limits of the State of Connecticut, and which then included and still includes a great portion of the Connecticut River, all of which portion of said river included within the territorial limits of the State of Connecticut is a navigable stream.

The defendant, the Commonwealth of Massachusetts, was one of the thirteen original colonies which, by covenant, constitution, contract and agreement, created the United States and imposed and conferred upon it its governmental powers and duties, which said state, as one of the thirteen original states, was then and still is a body politic organized and maintained for the purpose of promoting the happiness, prosperity and well-being of the people residing within its territorial limits, which includes a portion of the Connecticut River and many of the tributaries of said Connecticut River including the Swift, Ware and Miller Rivers, and Deerfield, Westfield and Quaboag Rivers, which empty and discharge their respective waters

into the Connecticut River and contribute to maintain the flow of said Connecticut River, which contributions and flowage from the above named tributaries are necessary to maintain and preserve the flow of the Connecticut River.

The State of Connecticut and the Commonwealth of Massachusetts have, by virtue of their respective sovereignties and by the rules of law recognized and applied in each of the said sovereign states, exclusive control and power of regulation of all waters within the territorial limits of said respective states, and both of said states have recognized as law for the government of the citizens in each of said states the right of riparian owners to the undiminished flowage of all streams within the territorial limits of each of the states, which flowage is to be free from contamination or burden of any kind placed upon it by other riparian owners wheresoever they may be situated, subject to the rights which have been conferred upon the United States of America in the interests of interstate commerce to preserve and protect the navigability of all streams wherever the same may be situated.

In compliance with the duty placed upon it by the compact between the original states, the United States has assumed the care and control of all navigable rivers and placed the immediate duty of exercising such care and control in the War Department of the United States government and the office of the Secretary of War, and the acts and things hereinafter complained of, constituting as they do an interference with interstate commerce by affecting the navigability of the said Connecticut River, necessitates that permission should be obtained from the War Department and the office of the Secretary of War of the United States before any of the acts and things hereinafter complained of can be lawfully done by the Common-

wealth of Massachusetts, which permission has not been obtained.

The Connecticut River rises in the Connecticut Lakes in northern New Hampshire and flows southward between New Hampshire and Vermont and across Massachusetts and Connecticut into Long Island Sound and is the largest river in New England, being about 345 miles long, and drains an area of 11,300 sq. miles, 2720 of which are within the state of Massachusetts and 1430 are in the State of Connecticut; and falls about 1900 ft. from its head waters in Connecticut Lakes to Long Island Sound. The mean annual precipitation in the Connecticut Valley is about 40 inches, ranging from about 45 inches at Hartford to about 35 inches in the upper portions; and the United States government has found the Connecticut River to be a navigable stream from Springfield, Massachusetts, to Long Island Sound, and all of that portion of said river below Hartford is in constant use as a means of transportation for passengers and freight on which a line of steamships carrying passengers between Hartford and New York makes two trips daily, and the citizens of Connecticut and the industries located throughout the Connecticut valley and elsewhere receive coal, merchandise and all classes of freight by means of this avenue of transportation, and there are a large numbers of sloops, yachts and pleasure craft maintained and used thereon.

The Ware, Quaboag and Swift Rivers join at Three Rivers in the Commonwealth of Massachusetts into what is known as the Chicopee River. Ware River drains about 221 miles of drainage area, rising in the town of Westminster in Worcester County, flows southwesterly ten miles to New Boston, where it turns and flows northwestward to Barre Falls, from which

place it flows in a general southwestward course to Three Rivers, where it receives the Quaboag, and thence southerly west of the City of Chicopee, where it enters the Connecticut River, a distance of approximately 60 miles, with a drainage area of 221 sq. miles.

Swift River has three main drainings, one of which rises in North Pond in the town of Orange, Mass., and flows southward; joined by another drainage two miles above the town of Enfield, Mass., and the two are joined by another drainage one and a half miles below the said town of Enfield, below which point it joins the Ware River. The length of the Swift River from the North Pond to the point of its juncture with the Ware River is about 30 miles and has a drainage area of about 213 square miles.

Quaboag River flows from Quaboag Pond in the town of Brookfield, Mass., in a southwesterly direction to Three Rivers and is about 23 miles in length, draining an area of about 210 sq. miles.

All of the country drained by these tributaries of the Connecticut River is hilly and the slope of the various rivers averages about 15 ft. to the mile. Many lakes and ponds drain into this river through numerous small tributaries and the minimum flow is well sustained by natural drainage and filtration. These rivers discharge a large and valuable and necessary supply of water into the Connecticut River, and any diminution in the amount of this discharge seriously affects the flow of the Connecticut River, interferes with and destroys the navigability of said Connecticut River, and by taking away this natural, well-sustained and usual contribution to the Connecticut River seriously affects and destroys the fertility of the soil adjoining and in the watershed drained by said Connecticut River and its tributaries.

The State of Connecticut is the owner of the bed of the Connecticut River within the State of Connecticut, which stream, as hereinbefore set forth, is a navigable river, and the State of Connecticut is entitled to have the waters of said stream delivered from the Commonwealth of Massachusetts undiminished in volume. The construction of the bed of the Connecticut River situated within the territorial limits of the State of Connecticut is such that the entire accustomed normal flow of the river assisted by flood waters and the discharge of tributary rivers at flood seasons of the year are necessary to maintain the navigability of the Connecticut River and keep said river free from sand bars and other formations which would obstruct the channel and interfere with the navigability of said stream; and any diminution from the natural flow of said river or removal of flood waters would result in a slow, sluggish flowage of said river and permit and cause sand bars to be formed, debris to collect and in divers other ways interfere and eventually destroy the navigability of said river within the territorial limits of the State of Connecticut.

The State of Connecticut is the owner of a certain tract of land situated on the west bank of the Connecticut River at the city of Middletown within said state, upon which is located the Connecticut State Hospital for the Insane, and as such riparian owner, the State of Connecticut is entitled to the usual and accustomed flow of the stream, including the flood waters thereof undiminished in volume and uncontaminated as to purity and to all other rights which in the State of Connecticut and the Commonwealth of Massachusetts are usual and incident to riparian ownership.

The State of Connecticut is charged with the duty of promoting and safeguarding the interests and the welfare of its

citizens and protection of property within the territorial limits of the state; and property and persons situated or living in or having interests in the Connecticut Valley so called are all of them injuriously affected by the acts and things contemplated and threatened to be done by the Commonwealth of Massachusetts which acts and things are more fully described hereinafter.

The Connecticut River flows through a portion of the State of Connecticut commonly designated as the Connecticut Valley, from Springfield, Mass., to Saybrook, Conn., where it empties into Long Island Sound, an arm of the Atlantic Ocean, and there is a vast area of watershed on either side of said Connecticut River which has from time immemorial received the benefits of the flood waters of the Connecticut River, which at various times throughout the year completely inundates land adjoining said river on both sides, and because of this natural and periodical inundation, the rain precipitation on all of the land comprising and forming a part of the Connecticut Valley is held back, and through the forces of nature and in the natural course of the laws of nature, this precipitation percolates gradually through the soil to the bed of the river, and in consequence thereof creates and maintains a large area of fertile tillable land within the boundaries of the state of Connecticut, which fertility will be seriously affected, if not destroyed, by the action contemplated by the Commonwealth of Massachusetts, as hereinafter set forth.

From time immemorial there has from time to time occurred, and especially in the winter and spring time of each year, large floods or freshets of water in said Connecticut River, and at each of said floods or freshets the water in its natural course spread over and covered the thousands of acres of land located on the banks of the Connecticut River, and deposited

thereon sediment and other substances which were very valuable to the hundreds of owners of said lands as fertilizers of said land, and by reason of the aforesaid waters and sediment covering said land from time to time as aforesaid, said land was rendered very valuable for farming purposes and especially for the raising of tobacco, hay and vegetables of all sorts. All of said lands are situated within the State of Connecticut and the owners thereof are citizens of the State of Connecticut.

The State of Connecticut is thickly populated and has large agricultural and industrial enterprises and interests located in that area known as the Connecticut Valley, all of which is drained by the Connecticut River. And beyond the borders of the state of Connecticut, and for many miles within the territorial limits of the Commonwealth of Massachusetts, there is a large watershed which is drained by the said Connecticut River, and cities and towns, factories, and riparian owners generally, discharge sewage, offal and waste matter in such manner that it is emptied into and carried away and disposed of by the waters of the Connecticut River. All of which acts and things have been done by reason of the natural topography of the country, and all of which necessitates that the natural flow of the Connecticut River, including the flood waters, should remain undiminished and unimpeded. And in view of the uses which have been made of the Connecticut River and the Connecticut Valley adjacent thereto, and which are still being made of said river and valley by the Commonwealth of Massachusetts and the municipalities within the territorial limits of the Commonwealth of Massachusetts, and the inhabitants within the territorial limits of the State of Connecticut, any interference with the flow of the Connecticut River, or diminution in the volume of water discharged into it or carried by it will seriously affect the health of the citizens of the State of Connec-

ticut and cause great sickness and suffering, and make possible disease and epidemics, and cause irreparable damage to the State of Connecticut and the citizens thereof, for which there is no adequate remedy at law.

The Commonwealth of Massachusetts threatens and intends and has already expended large sums of money in making plans, preparing specifications, advertising for bids from contractors and doing all such further acts and things as are usual and incident to carrying out of its said plans to divert the waters from the tributaries of the Connecticut River hereinbefore described as the Swift River, the Ware River and the Miller River, from their natural flow into the Connecticut River and convey said waters by means of conduits, aqueducts and tunnels from the watershed of the Connecticut River into the Wachusett reservoir near the city of Worcester, in the Commonwealth of Massachusetts, in such manner that not any of the water so diverted, stored, carried and discharged will be again discharged or released into the Connecticut River or into any portion of the watershed drained by the Connecticut River or any of its tributaries, but will be taken away and lost forever as a part of the Connecticut River, to the great damage of the State of Connecticut and the citizens thereof and to the property within the territorial limits of said state and to the damage and destruction of the vested right which the State of Connecticut has in said waters, for which there is no adequate remedy at law; and said diversion would eventually eliminate all of the water so taken from the Connecticut River or any of its tributaries and from the Connecticut Valley and from any of the drainage area included within the watershed of the Connecticut River or any of its tributaries, and will destroy property and property rights of the citizens of the

State of Connecticut located within the territorial limits of the state, all of which it is the duty of the State of Connecticut to protect; and will seriously menace the health of the residents of the State of Connecticut, and the residents of the State of Connecticut have no adequate remedy at law to provide for the protection of their interests in the premises.

The Commonwealth of Massachusetts has made extensive surveys, perfected elaborate plans and proceeded to carry their plans into execution without any notice whatever to the State of Connecticut and without any attempt whatever to ascertain the nature and extent of the damage which such taking and diversion may occasion to the State of Connecticut or the property owned by the State of Connecticut or to the citizens or the interests and welfare of the State of Connecticut, which it is the duty of the State to foster and protect. The State of Connecticut, upon its own initiative and after inquiry which it has set on foot, ascertained and, therefore, avers that the taking of the Swift, Ware and Miller Rivers is but a portion of a general plan adopted by the Commonwealth of Massachusetts for the acquisition of the waters of the Deerfield, Westfield and Quaboag Rivers, which would leave the Connecticut River with very little if any water flowing therein from Springfield, Massachusetts, to Saybrook, Connecticut, and would take away all of the flood waters to which the State of Connecticut and its inhabitants are entitled and which are necessary for its health and maintenance as hereinbefore set forth, and would so seriously diminish the normal flow as to entirely destroy all navigation on the Connecticut River.

In addition to the diversion of the Swift River, Ware River, Miller River, Deerfield River, Westfield River and Quaboag River, the Commonwealth of Massachusetts has vari-

ous other plans and has under construction conduits, reservoirs and tunnels for the diversion and storage of water from other tributaries of the Connecticut River, which water is subsequently turned into the Connecticut River in a polluted condition, all of which acts and things make it necessary that there should be no diminution in the flow of the Connecticut River or any interference with the flood waters which come down through the Connecticut valley, all of which natural flowage of the River and flood waters are necessary to care for and dispose of the large amount of sewage and other deleterious matters which is being collected in large volume and discharged into the bed of the Connecticut River to be carried by it through the State of Connecticut.

The Commonwealth of Massachusetts threatens and intends, and has already let contracts and erected constructions to immediately divert the waters of the Ware River, Swift River and Miller River and unless enjoined from so doing will effectually and for all time remove the waters of said tributaries from the Connecticut River; and unless the power of this court be invoked the Commonwealth of Massachusetts will divert said waters and take the rights and property of the State of Connecticut and its citiens and seriously menace the health of the citizens of the State of Connecticut and do irreparable damage to the State of Connecticut and its citizens.

The Commonwealth of Massachusetts, in pursuance of its plans, threatens and intends to take the property of the State of Connecticut and to destroy and irreparably damage the property of the State of Connecticut and of its citizens, all of which is contrary to law and without due process of law, and is an attempt on the part of one sovereign state to take and destroy or damage the property of another sovereign state.

Prior to the formation and development of the plans for the taking of the waters as hereinbefore set forth, cities and towns within the territorial limits of the Commonwealth of Massachusetts acting with the consent and permission of the Commonwealth of Massachusetts have constructed sewer systems which together with the discharge of acids and other deleterious substances from a large number of mills and industrial plants located within the Commonwealth of Massachusetts are emptied and discharged into the Connecticut River, and carried by it through the State of Connecticut. And notwithstanding the plans and specifications for taking water from the Connecticut River, the Commonwealth of Massachusetts still permits the discharge of sewage and offensive matters into the Connecticut River, which sewage and other substances so discharged cannot be carried away and removed unless the normal flow of the river is maintained and the periodical discharge of flood waters is permitted to augment said normal flow and cleanse and purify the Connecticut River and the banks and property adjacent thereto.

Your orator represents the interests and welfare of a large portion of its inhabitants situated on the banks of the Connecticut River, including the cities of Hartford and Middletown, all of whom will be injuriously affected by any serious interference with the usual and customary flow of the stream as it passes through the state. Particularly is this true inasmuch as the waters of this stream as delivered into Connecticut from the Commonwealth of Massachusetts are polluted with the sewage of municipalities and private citizens and the refuse of manufacturing plants situated upon the stream within the Commonwealth of Massachusetts. Any appreciable interference with the normal flow of the stream and especially to re-

move the beneficial effects of the scouring of the river by the flood waters at certain times in the year will mean serious concern to the health and welfare of thousands of inhabitants of the state who live along the banks of the stream, and particularly in the cities of Hartford and Middletown.

Your orator further represents that under the common law of riparian ownership which was recognized in both the State of Connecticut and the Commonwealth of Massachusetts from their earliest history, the State of Connecticut has the vested right as a sovereign to the waters of the Connecticut River as nature intended they should flow into the state and such vested right cannot be taken from your orator.

In consideration whereof, and for as much as your orator and its citizens and residents who except by representation by your orator have no remedy and can only have adequate relief in this honorable court, your orator on its own behalf and also as *parens patriae*, trustee, guardian and representative of that great proportion of its citizens, who are directly affected by the acts of the defendant hereinbefore set forth, prays this honorable court to take cognizance of the general charges set forth in the premises.

WHEREAS your orator needing relief prays:

1. That the said Commonwealth of Massachusetts, its servants and agents and each and every of them may be made defendants to this bill of complaint, and that they and each of them may be compelled to answer each and every allegation therein contained, but not under oath, the answer under oath being expressly waived.

2. That it be adjudged and decreed that neither your orator nor any of its citizens and residents have an adequate remedy at law for the injury which will result from the en-

forcement of said acts and that such injury would be irreparable.

3. That the said defendant, its officers, agents and servants and each of them may be restrained from committing any of the acts and deeds herein complained of and from any violation of the rights of your orator or of its citizens and residents in the premises, by a writ of injunction, issuing out of and under the seal of this honorable court, perpetually enjoining and restraining the said defendant, its respective officers, agents, servants, attorneys, workmen and employees, from in any way interfering with the natural and customary flow of the waters of the Connecticut River and of any tributaries thereto and particularly as to the Swift, Ware, Miller and Quaboag Rivers and Beaver Brook and of the flood waters thereof.

4. That this honorable court may grant your orator such other and further relief as the equity of the case may require whether specifically prayed for herein or not, and which to your Honors may seem just and proper in the premises.

5. That it may please your Honors to grant unto your orator not only a writ of injunction conformable to the prayers of this bill, but also that a writ of subpoena of the United States of America be issued out of and under the seal of this court, directed to the Commonwealth of Massachusetts, its officers servants and agents, to be served upon the Governor of said Commonwealth of Massachusetts and the Attorney-General thereof, commanding said defendant on a certain day to be named therein, and under a certain penalty, to be and appear before this Honorable Court, and then and there to answer, but not under oath, answer under oath being waived, all and singular the premises, and to stand to, perform, and abide such order, direction and decree as may be against said defendant in the

premises and as may be required by the principles of law, equity and good conscience.

THE STATE OF CONNECTICUT
By BENJAMIN W. ALLING,
Its Attorney General.

And your orator will ever pray.

ERNEST A. AVERILL
Deputy Attorney General
BENEDICT M. HOLDEN
of Counsel

EXHIBIT "A"

AN ACT CONCERNING THE USE OR DIVERSION OF WATER OF STREAMS WITHOUT THE STATE TRIBUTARY TO STREAMS WITHIN THE STATE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. The attorney general is authorized to investigate and, with the approval of the governor, to take such action as shall be deemed necessary to protect the state from damage by diversion or other interference with water from streams without the state which enter or are tributary to streams flowing within the state.

Sec. 2. The attorney general is authorized, with the approval of the board of finance and control, to negotiate and contract, in the name of the state, with any commission appointed by another state, or with any duly authorized agent thereof, concerning the use, allocation or diversion of any water from streams or tributaries without the state of streams which in their natural course flow through, into or across the state.

Sec. 3. This act shall take effect from its passage.

Approved June 8, 1927.

County of Hartford } ss.
State of Connecticut }

Benjamin W. Alling, being first duly sworn, says that he is the Attorney General of the State of Connecticut, and that he has resided in said state for many years past; that he is well acquainted with the facts and circumstances set forth in the

foregoing bill of complaint; that he has read the same and knows the contents thereof, and that the same is true of his knowledge, except as to matters therein stated upon information and belief and as to such matters he believes the same to be true.

Benjamin W. Lewis.

Sworn to before me and subscribed in my presence, this 21st day of December, A. D. 1927.

Helen E. Kelly

Notary Public in and for
the State of Connecticut